

The Telecommunications Excise Tax is imposed upon the act or privilege of originating or receiving intrastate or interstate telecommunications in Illinois at the rate of 7% of the gross charges for such telecommunications purchased at retail from retailers. See 86 Ill. Adm. Code 495. (This is a GIL).

October 25, 1999

Dear Mr. Xxxxx:

This letter is in response to your letter dated August 17, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

This letter is written on behalf of our client, to be hereinafter referred to as SERVICE PROVIDER. We are seeking advice as to the applicability of the Illinois Telecommunications Excise Tax to the advanced telephone calling services and related management consulting services provided by SERVICE PROVIDER. SERVICE PROVIDER combines a tremendous amount of software and a wide variety of hardware systems to process requests made via telephone lines and the Internet. SERVICE PROVIDER has largely developed this software.

SERVICE PROVIDER offers the services listed below to its customers in Illinois. Please note that all of these services are performed in Illinois.

Answering Service - This system will answer 1-800 number calls and perform the following general operations on each inbound call:

1. play messages,
2. translate the calling number into an agency telephone number and
3. place calls to the chosen agency.

Voice Mail - In addition, SERVICE PROVIDER will provide voice mail services for each agency to be used by incoming callers when the agent is not available.

Customer Service Support - Live operator services are provided to the agents and the management to change agency parameters, maintain voice mail lists and answer general questions concerning the systems.

Conference Calls - CUSTOMER is billed for using SERVICE PROVIDER conference calling system. The charge for this service is equal to the amount the SERVICE PROVIDER pays to the Telecommunications Company providing the conferencing services (i.e. no mark-up on service).

Rental of Terminal - A computer terminal is rented to CUSTOMER. The sole purpose of this terminal is to run the implemented application.

Below is a typical transaction.

A CUSTOMER member calls the 800 number found on the back of their membership card for roadside assistance. The call comes in to the SERVICE PROVIDER. Upon answering, the SERVICE PROVIDER's automated platform prompts the caller for their membership number, which is then checked against the CUSTOMER member database. If the membership number is not valid, the call is terminated. If the caller enters a valid number, the SERVICE PROVIDER's automated platform offers a menu of available services including: roadside assistance, locksmith service, trip planning, etc... If the customer selects roadside assistance, the system retrieves the member's ANI (Automated Number Identification, which is simply the 10-digit telephone number from which the call originates) and maps it to a second database of registered towers that are under contract with CUSTOMER. Towers are the agents responsible for answering the calls. In most cases, multiple towers may serve a particular geographic area matched to the caller's ANI. Simply put, SERVICE PROVIDER's job is to find the best tower: the one that is least expensive to CUSTOMER, has the highest performance rating, and is closest to the CUSTOMER member requesting assistance.

SERVICE PROVIDER also provides real-time web-based access to Call Detail Records (CDR) generated by their application. When a call is made, a CDR is recorded and made available to CUSTOMER. This data is extremely useful to the CUSTOMER in a number of ways including: determining the best and worst towers, maximizing the percent of calls automated, determining the method of calls (e.g., the number of members using cellular phones), and tracking the number of calls per ½ hour, day, etc. CUSTOMER uses this highly detailed information to manage and improve the efficiency of their entire organization.

Once an application has been developed and fully implemented SERVICE PROVIDER runs and maintains the application. The applications are run from the redundant sites in Deerfield and Chicago IL.

SERVICE PROVIDER pays the Telecommunication Tax to the telecommunications company for all telecommunications services purchased, such as the conference calls. SERVICE PROVIDER bills the customer for the cost of the telecommunications; however, there is no mark-up on the customer's invoice for the telecommunication services.

We are aware of the taxing provision under the Illinois Compiled Statutes, 35 ILCS 630/3 that generally imposes an excise tax on interstate and intrastate telecommunication services. The statutes explicitly exclude:

- value added services in which computer processing applications are used to act on the form, content, code and protocol of the information for other than transmission,
- charges for the storage of data or information for subsequent retrieval or charges for the processing of data or information intended to change its form or content,
- charges for automated data storage, retrieval and processing services or for the use of computer time or other equipment and
- automated information retrieval or data processing charges.

After studying the matter, we believe that the services provided by SERVICE PROVIDER are not subject to the Illinois Telecommunications Excise Tax. However, due to the uniqueness of these services, we respectfully request that the Illinois Department of Revenue address whether the services provided to the customers in Illinois are subject to the Illinois Telecommunications Excise Tax. In addition, please address the following:

1. If such services are not taxable, should SERVICE PROVIDER be paying tax to its telecommunication service provider?
2. If such services are taxable, should SERVICE PROVIDER charge the Illinois Telecommunications Excise Tax on the entire amount billed to its customer? Is SERVICE PROVIDER allowed to take a credit for any telecommunication tax paid to the Telecommunication Company?

For the purpose of this ruling, you may assume that each service listed above is separately stated on the customer's invoice.

If you need any additional information, please call PERSON at ####. We appreciate your consideration of this matter and look forward to your reply.

We are unable to answer your questions in the context of a General Information Letter. We hope the following general information regarding the Telecommunications Excise Tax is helpful. The Telecommunications Excise Tax is imposed upon the act or privilege of originating or receiving intrastate or interstate telecommunications in Illinois at the rate of 7% of the gross charges for such telecommunications purchased at retail from retailers. See 86 Ill. Adm. Code 495, enclosed.

Pursuant to Section 495.100(a), "gross charge" means the amount paid for the act or privilege of originating or receiving telecommunications in this State and for all services and equipment provided in connection therewith by a retailer,

valued in money, whether paid in money or otherwise, including cash credits, services and property of every kind or nature, and shall be determined without any deduction on account of the cost of such telecommunications, the cost of material used, labor or service cost or any other expense whatsoever.

Persons who are providing customers with the use of 1-800 service or dedicated line service and assess customers charges for the use of such 1-800 numbers and dedicated line charges, are considered to be telecommunications retailers and will generally incur Telecommunications Excise Tax on the total charges made for such services.

As a general proposition, charges for voice mail services are not subject to Telecommunications Excise Tax if they are disaggregated from transmission charges and separately identified in the books and records of the retailer. Regulation 86 Ill. Adm. Code 495.100(c) states in part that: "Charges for answering services, for example, whether provided electronically or by live operators, represent charges for the storage of information or data for subsequent retrieval, and are not subject to tax, provided that these charges, if provided in connection with taxable telecommunications, are disaggregated and separately identified in the books and records of the retailer." If voice mail charges are not disaggregated from transmission charges, they are subject to tax.

Generally, conference calling services are subject to Telecommunications Excise Tax for all telecommunications line charges and conferencing fees for calls originating or terminating in this State that are charged to a service address in this State. The provision of conference calling services is directly related to the retailer's provision of telecommunications to customers and is included in the gross charges.

Please note that purchases from local and long distance carriers for line time may be purchased without incurring tax by providing these suppliers with Certificates of Resale. If tax is paid to local and long distance carriers for line time that is purchased for resale, the telecommunications provider can take a credit against its Telecommunications Excise Tax liability without filing a claim with the Department. See the enclosed copy of 86 Ill. Adm. Code 495.130.

Effective January 1, 1998, the Telecommunications Municipal Infrastructure Maintenance Fee Act (Act) (35 ILCS 635/1 et seq.) provides for the imposition of various fees upon telecommunications retailers.

Section 15 of the Act imposes a State infrastructure maintenance fee upon telecommunications retailers, as that term is defined in 35 ILCS 635/10, "equal to 0.5% of all gross charges charged by the telecommunications retailer to service addresses in this State for telecommunications, other than wireless telecommunications, originating or received in this State." (35 ILCS 635/15(b).) Section 15 also provides for an optional infrastructure maintenance fee which telecommunications retailers may pay "with respect to the gross charges charged by the telecommunications retailer to service addresses in a particular municipality for telecommunications, other than wireless telecommunications, originating or received in the municipality...." (35 ILCS 635/15(c).) These

fees are collected, enforced and administered by the Illinois Department of Revenue. (35 ILCS 635/25(b))

Section 20 of the Act provides that municipalities may impose a municipal infrastructure maintenance fee upon telecommunications retailers. This fee is based upon gross charges charged by the telecommunications retailers to service addresses in the municipality for telecommunications originating or received in the municipality. This fee is collected, enforced, and administered by the municipality imposing the fee. (35 ILCS 635/25(c).)

Illinois municipalities are also authorized to impose a municipal telecommunications tax. (See 65 ILCS 5/8-11-17.) The tax is imposed on the act or privilege of originating in such municipality or receiving in such municipality intrastate or interstate telecommunications by a person at a rate not to exceed 5% of the gross charges for such telecommunications purchased at retail by such person. (See 65 ILCS 5/8-11-17(a)(1) and 65 ILCS 5/8-11-17(a)(2).) This tax may only be imposed if the municipality does not have in effect an occupation tax imposed on persons engaged in the business of transmitting messages by means of electricity as authorized by Section 8-11-2 (65 ILCS 5/8-11-2) of the Illinois Municipal Code. The municipality imposing the tax provides for its administration and enforcement, not the Illinois Department of Revenue. Therefore, questions regarding this tax should be addressed to the individual municipalities imposing it. There is no equivalent statute for county governments.

In addition, the Emergency Telephone System Act provides that "[t]he corporate authorities of any municipality or any county may, subject to the limitations of subsections (c), (d), and (h), and in addition to any tax levied pursuant to Section 8-11-2 of the Illinois Municipal Code, impose a monthly surcharge on billed subscribers of network connection provided by telecommunication carriers engaged in the business of transmitting messages by means of electricity originating within the corporate limits of the municipality or county imposing the surcharge at a rate per network connection determined in accordance with subsection (c)." (See 50 ILCS 750/15.3(a) and (c).) "The surcharge authorized by this Section shall be collected from the subscriber by the telecommunications carrier providing the subscriber the network connection as a separately stated item on the subscriber's bill." (50 ILCS 750/15.3(f).) This surcharge is paid to the municipality, county or Joint Emergency Telephone System Board. (See 50 ILCS 750/15.3(g).) Questions regarding the surcharge should be addressed to the municipality or county imposing it.

Please note that the State of Illinois taxes leases differently for Retailers' Occupation Tax and Use Tax purposes than the majority of other states. For Illinois sales tax purposes, there are two types of leasing situations: conditional sales and true leases.

A conditional sale is usually characterized by a nominal or one dollar purchase option at the close of the lease term. Stated otherwise, if lessors are guaranteed at the time of the lease that the leased property will be sold, this

transaction is considered to be a conditional sale at the outset of the transaction, thus making all receipts subject to Retailers' Occupation Tax.

A true lease generally has no buy out provision at the close of the lease. If a buy out provision does exist, it must be a fair market value buy out option in order to maintain the character of the true lease. Lessors of tangible personal property under true leases in Illinois are deemed end users of the property to be leased. See the enclosed copy of 86 Ill. Adm. Code 130.220. As end users of tangible personal property located in Illinois, lessors owe Use Tax on their cost price of such property. The State of Illinois imposes no tax on rental receipts. Consequently, lessees incur no tax liability.

The above guidelines are applicable to all true leases of tangible personal property in Illinois except for automobiles leased under terms of one year or less, which are subject to the Automobile Renting Occupation and Use Tax found at 35 ILCS 155/1 et seq.

As stated above, in the case of a true lease, the lessors of the property being used in Illinois would be the parties with Use Tax obligations. The lessors would either pay their suppliers, if their suppliers were registered to collect Use Tax, or would self-assess and remit the tax to the Department. If the lessors already paid taxes in another state with respect to the acquisition of the tangible personal property, they would be exempt from Use Tax to the extent of the amount of such tax properly due and paid in such other state. See 86 Ill. Adm. Code 150.310(a)(3) enclosed.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.